a constructive trust. *Edwards* v. *Culberson*, 111 N. C. 342, 16 S. E. 233; *Harrison* v. *Tierney*, 254 Ill. 271, 98 N. E. 523. If the wrongdoer uses the property to pay a creditor whose claim is secured, equity will subrogate the injured party to the creditor's former rights against the security. *Title Guaranty Co.* v. *Haven*, 196 N. Y. 487, 89 N. E. 1082; *Oury* v. *Saunders*, 77 Tex. 278, 13 S. W. 1030; *M'Mahon* v. *Fetherstonhaugh*, [1895] 1 I. R. 83. Subrogation, like the device of a constructive trust, is a remedial doctrine applied broadly as may best serve the purposes of justice. See Roscoe Pound, "The Progress of the Law — Equity," 33 HARV. L. REV. 420, 421; SHELDON, SUBROGATION, 2 ed., § 13. The principal case, however, refuses subrogation to the defrauded plaintiff and contends in effect that although there was fraud on the part of the mortgagor, this was negatived by plaintiff's failure to examine the records. In actions for deceit, nevertheless, the negligence of the injured party cannot, by the better view, be used as a defense. *Fargo Coke Co.* v. *Electric Co.*, 4 N. D. 219, 59 N. W. 1066; *Redding* v. *Wright*, 49 Minn. 322, 51 N. W. 1056. It is also well settled that creditors cannot profit by their debtor's wrong. *In re Ennis*, 187 Fed. 720; *Brennan* v. *Tillinghast*, 201 Fed. 609. Furthermore, the second mortgagee's pre-existing rights here would not be prejudiced by allowing subrogation to the plaintiff. Thus the question of whether plaintiff was put on notice by the records is immaterial. It is submitted therefore that the principal case is incorrect.

CONTRACTS — ENLISTMENT — ACTION BY SOLDIER TO RECOVER PAY. — By the terms of his enlistment in the British Army, suppliant was to be paid six shillings a day. His pay was later reduced to one shilling, on the ground that the higher rate was erroneous. After discharge, he seeks to recover the difference by petition of right. The Crown demurred. *Held*, that the demurrer be sustained. *Leaman* v. *The King*, [1920] K. B., The London Times, July 24, 1920, p. 4.

It has long been settled law in England that an army officer cannot recover his pay in an action, but must rely on the grace of the Crown. *In re Tufnell*, 3 Ch. D. 164. Suppliant sought to distinguish his case on the ground that enlistment is a contract. See ARMY ACT 1881, 44 & 45 VICT., c. 58, s. 80 (1). See also MANUAL OF MILITARY LAW, War Office, 1914, p. 189. A petition of right ordinarily lies on a contract with the Crown. *Thomas* v. *The Queen*, L. R. 10 Q. B. 31. And once the Crown has granted its fiat that right be done, the action proceeds as between subject and subject. See 2 ANSON, LAW AND CUSTOM OF THE CONSTITUTION, 3 ed., Part 2, p. 299. The principal case therefore holds either that there is no contract; or that there is a contract unenforceable against the Crown, not because of any procedural difficulty, but because of its peculiar nature as an agreement for military service. The court declined to decide which theory is correct. The section of the Army Act giving to the Crown the final decision in cases of doubt as to pay, would support either view. See 44 & 45 VICT., c. 58, s. 140 (3). In the United States enlistment is a contract. *In re Grimley*, 137 U. S. 147. And a soldier can sue on it in the Court of Claims. *Hosmer* v. *United States*, 3 Ct. Cl. 6, aff'd *United States* v. *Hosmer*, 9 Wall. (U. S.) 432.

DANGEROUS PREMISES — LIABILITY TO LICENSEES — IS A FIREMAN A LICENSEE? — Defendant maintained a paved driveway on its premises giving access from the street to its barn. An unguarded coal hole extended half way across the pavement. Plaintiff, a fireman, while going to a fire in the barn at night, fell into the coal hole and was injured. *Held*, that the plaintiff can recover. *Meiers* v. *Fred Koch Brewery*, 127 N. E. 491 (N. Y.).

By the weight of American authority, a fireman who enters property to extinguish a fire has the legal status of a licensee and takes the risk of visible

defects of the premises. *Lunt* v. *Post Publishing Co.*, 48 Colo. 316, 110 Pac. 203; *Beehler* v. *Daniels*, 18 R. I. 563, 29 Atl. 6. Since the fireman's paramount duty to the public commands him to enter and the occupier may not prohibit him, the license is said to be by operation of law. See *Woodruff* v. *Bowen*, 136 Ind. 431, 34 N. E. 1113. In two states public officers have been given rights of business guests on the theory of implied invitation, though permission is immaterial to the right to enter. *Learoyd* v. *Godfrey*, 138 Mass. 315; *Anderson & Nelson Distilling Co.* v. *Hair*, 103 Ky. 196, 44 S. W. 658. In the principal case the same result is reached by placing firemen in a special category and investing them with the rights of invitees. The soundness of this result is doubtful, for in effect it compels occupiers to keep premises safe for invitees at all times on the chance that public officers will be required to enter. Since firemen are injured in the public service, they should be compensated by the public, as for example, by a pension fund.

EASEMENTS — EXTINGUISHMENT OF EASEMENTS — APPURTENANT EASEMENT GIVING ACCESS TO HIGHWAY NOT EXTINGUISHED BY ACQUISITION OF A MEANS OF EGRESS TO HIGHWAY. — A grantor sold to the plaintiff a lot from which the only access to the public road was a private way over a lot which the grantor retained. The grantor subsequently sold the latter lot to the defendant. Later, the plaintiff acquired land giving him another outlet to the highway. The defendant thereon obstructed the private way and the plaintiff sued to have an easement declared in his favor. *Held*, that the plaintiff had an easement. *Wilson* v. *Glascock*, 126 N. E. 231 (Ind.).

A way of necessity ends with the necessity. *Bauman* v. *Wagner*, 130 N. Y. Supp. 1016. See *Hart* v. *Deering*, 222 Mass. 407, 111 N. E. 37. On the other hand, it is generally held that an easement by express grant does not end with the necessity. *Atlania Mills* v. *Mason*, 120 Mass. 244. An easement acquired because it is appurtenant, being open, apparent, and continuous, is based on the implied intent of the grantor. As the easement is based on a fiction, its limits should be narrowly construed. The weight of authority in America holds that such easement must be reasonably necessary to the beneficial enjoyment of the grantee's estate. *Johnson* v. *Knapp*, 146 Mass. 70, 15 N. E. 134; *Spencer* v. *Kilmer*, 151 N. Y. 390, 47 N. E. 1111. See 1 TIFFANY, REAL PROPERTY, § 317. The principal case suggests that the later acquisition of other modes of egress will never terminate the easement. *Mosher* v. *Hibbs*, 24 Ohio Cir. Ct. Rep. 375, *accord*. This goes too far. Limiting the easement narrowly, it should be held that it ceases when its reason, which is reasonable necessity, ceases.

EVIDENCE — DECLARATION CONCERNING INTENTION, FEELINGS, OR BODILY CONDITION — STATEMENT TO ONE NOT A PHYSICIAN. — The plaintiff sought to prove his injuries received while a passenger in the defendant's automobile. His statements to his wife and mother, made during his resultant incapacitation, with regard to existing pain, were admitted in evidence. *Held*, that the testimony was properly admitted. *Williams* v. *A. R. G. Bus Co.*, 190 Pac. 1036 (Cal.).

Under an exception to the Hearsay Rule, a third party overhearing groans or cries uttered by one in pain, may testify to such "verbal acts." *Hagenlocher* v. *Brooklyn R. R.*, 99 N. Y. 136, 1 N. E. 536. See *Wilkins* v. *Mayor of Wilmington*, 2 Marv. (Del.) 132, 133, 42 Atl. 418, 419. In most jurisdictions spontaneous exclamations of existing suffering, to whomsoever made, are also admissible. *Baltimore & Ohio Ry. Co.* v. *Rambo*, 59 Fed. 75; *Mississippi Central Ry. Co.* v. *Turnage*, 95 Miss. 854, 49 So. 840; *Cashin* v. *N. Y., N. H., & H. R. R. Co.*, 185 Mass. 543, 70 N. E. 930. If made to a physician, they have greater weight. See *Northern Pacific Ry. Co.* v. *Urlin*, 158 U. S. 271, 275;